

Raley's, Inc. and Retail Clerks Union, Locals 373, 588, and 1179, affiliated with United Food and Commercial Workers International Union, AFL-CIO

Independent Drug Clerks Association and Retail Clerks Union, Locals 373, 588, 1179, affiliated with United Food and Commercial Workers International Union, AFL-CIO. Cases 20-CA-14815, 20-RC-14833, and 20-CB-4938

June 29, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On February 23, 1981, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, Respondent Raley's, Inc., filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, the Charging Party filed a brief in answer to Respondent's exceptions, and Respondents Raley's, Inc., and Independent Drug Clerks Association jointly filed a brief in opposition to the General Counsel's cross-exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Raley's, Inc., Sacramento, California, its officers, agents, successors, and assigns, shall take the action

¹ Respondent Raley's, Inc., has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² In adopting the Administrative Law Judge's Decision we wish to point out that, while an employer may lawfully state its preference between competing unions in a representation election (*Stewart-Warner Corporation*, 102 NLRB 1153 (1953)), Respondent clearly went beyond indicating its preference by according the incumbent Union privileges and favored treatment so as to enhance that Union's position to the detriment of the petitioning Union.

We hereby correct the Administrative Law Judge's inadvertent omission from his Conclusions of Law that Respondent violated Sec. 8(a)(1) of the Act by making derogatory remarks about the Retail Clerks Union to employees. The recommended Order and notice are changed to reflect this correction.

We also correct an inadvertent error in sec. D of the Administrative Law Judge's Decision. In the second paragraph he states that "Sordillo replied she didn't know." This should read "Louritt" rather than "Sordillo."

set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(b) and renumber the successive paragraphs accordingly:

"(b) Making denigrating statements about the Retail Clerks Union to employees."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

IT IS FURTHER ORDERED that, as we have adopted the Administrative Law Judge's recommendation to sustain the Retail Clerks Union's Objections 1 and 2 to the conduct of the election, the election be, and it hereby is, set aside, and that this case be remanded to the Regional Director for Region 20 for appropriate action.

[Direction of Election and *Excelsior* footnote omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify you that:

WE WILL NOT unlawfully interrogate our employees about their union membership, sympathies, or activities.

WE WILL NOT make denigrating comments and statements about the Retail Clerks Union, Locals 373, 588, and 1179, affiliated with United Food and Commercial Workers International Union, AFL-CIO, to our employees.

WE WILL NOT threaten our employees with discharge or discipline if they speak to repre-

sentatives of the Retail Clerks Union, or any other labor organization, while at the same time allowing representatives of the Independent Drug Clerks Association to campaign freely among the employees in all areas of our stores.

WE WILL NOT unlawfully announce the granting of increased benefits to employees in order to induce them to select Independent Drug Clerks Association as their collective-bargaining agreement and to discourage support for the Retail Clerks Union, or any other labor organization.

WE WILL NOT remove campaign literature of the Retail Clerks Union, or any other labor organization, from employee bulletin boards while allowing such literature from Independent Drug Clerks Association to remain posted.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

RALEY'S, INC.

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon charges and subsequent charges filed by Retail Clerks Union, Locals 373, 588, and 1179, affiliated with United Food and Commercial Workers International Union, AFL-CIO (hereafter called the Retail Clerks), in Cases 20-CA-14815 and 20-CB-4938 against Rayley's, Inc. (hereafter called Rayley's), and Independent Drug Clerks Association (hereafter called IDCA), the Regional Director for Region 20 issued an order consolidating the cases and a consolidated complaint and notice of hearing on October 31, 1979.¹ An amended consolidated complaint was subsequently issued on December 19. Pursuant to telegraphic notification, the complaint was further amended at the time of the hearing herein.

In addition, the Retail Clerks, as Joint Petitioners, filed a representation petition on June 6 in Case 20-RC-14833 for a unit of Rayley's employees in its Drug and Family Center stores in northern California.² The parties, with IDCA as intervenor, executed a Stipulation for Certification Upon Consent Election agreement, which was approved by the Regional Director on July 5. An election was held on August 16 and the tally of ballots indicated

that of approximately 213 eligible voters 106 cast ballots for IDCA, 79 cast ballots for the Retail Clerks, and 1 ballot was against representation by either labor organization. There were seven challenged ballots which were not sufficient in number to affect the results of the election. The Retail Clerks filed timely objections to the election and on December 18 the Acting Regional Director issued his Report on Objections.³ The Acting Regional Director determined that the objections and the allegations of the amended complaint in the unfair labor practice cases constituted a "single, overall controversy" and consolidated the objections with the unfair labor practice cases for purposes of hearing.

A hearing was held on this consolidated matter on February 26, 27, and 28, 1980, in Sacramento, California. All parties were represented and afforded full opportunity to examine and cross-examine witnesses, and to present material and relevant evidence on the issues in controversy.⁴ Briefs were submitted by all parties and have been duly considered.

Upon the entire record in this case⁵ and from my observation of the witnesses and their demeanor while testifying, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent Rayley's, Inc., is, and has been at all times material herein, a California corporation with its principal office and place of business located in Sacramento, California. Respondent Rayley's is engaged in the retail sale of food, drugs, and other related products at various facilities consisting of freestanding drugstores and combination supermarkets and drug centers in northern California. During the calendar year ending December 31, 1978, Rayley's in the course and conduct of its business operations derived gross revenues in excess of \$500,000. During the same period of time, Rayley's purchased and received goods and services valued in excess of \$50,000 from sources located outside the State of California. Accordingly, I find that Rayley's is, and has been at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* (hereafter called the Act).

II. THE LABOR ORGANIZATIONS INVOLVED

Retail Clerks Union, Locals 373, 588, and 1179, affiliated with United Food and Commercial Workers International Union, AFL-CIO, and Independent Drug Clerks Association are labor organizations within the meaning of Section 2(5) of the Act.

¹ Unless otherwise indicated, all dates herein refer to the year 1979.

² The unit was described in the consent agreement as:

All full-time and regular part-time Drug and Family Center employees employed by Rayley's, Inc., at its stores located in the State of California, excluding Tehama County; excluding all employees covered by other collective-bargaining agreements, security officers, licensed and/or registered pharmacists, and supervisors, including managers and first and second assistant managers, and guards, as defined in the Act.

³ The original objections filed by the Retail Clerks totaled 13 in number. The Joint Petitioners subsequently withdrew all but three, which were left for consideration by the Acting Regional Director.

⁴ Counsel for the Retail Clerks did not appear at the hearing and Larry Heise, organizing director for Local 588, entered an appearance. However, counsel submitted a post-hearing brief on behalf of the Retail Clerks.

⁵ Certain errors in the transcript are hereby noted and corrected.

III. THE ISSUES INVOLVED

1. Whether Raley's, through its supervisors and agents, unlawfully interrogated employees at its various facilities about their union membership, sympathies, and activities.

2. Whether Raley's, through various supervisors and agents, threatened to terminate employees if they spoke to representatives of the Retail Clerks on company time.

3. Whether Raley's unlawfully announced that it was granting, and did grant, its employees increased health and welfare benefits to induce the employees to select the incumbent IDCA as their bargaining representative and to discourage employee support for the Retail Clerks.

4. Whether Raley's, through various supervisors and agents, rendered aid, assistance, and support to IDCA by permitting representatives of that organization to campaign among the employees during working hours in all areas of the stores while instructing employees not to talk to representatives of the Retail Clerks during working hours.

5. Whether Raley's, acting through a supervisor, rendered aid, assistance, and support to IDCA by permitting campaign literature of that organization to remain posted on an employee bulletin board at one of Raley's facilities while removing campaign literature of the Retail Clerks from the same location.

6. Whether Respondent IDCA, through its president, violated the Act by threatening to cause the transfer of employees if they supported the Retail Clerks.

7. Whether Respondent Raley's transferred employee Mary Elliott because she assisted and supported the Retail Clerks and engaged in protected activities on behalf of that organization, and also to discourage other employees from engaging in such activities on behalf of the Retail Clerks.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

The facilities of Raley's that are involved in these proceedings consist of the freestanding drugstores and combination supermarkets and drug centers (Family Centers) located in northern California. The bargaining history discloses that the food department employees at these facilities are, and have been, represented by the local unions which constitute the Charging Parties in this matter. The drug center and drugstore employees, however, have been represented by IDCA since that Union was certified by the Board in 1963. IDCA and Raley's have been parties to successive collective-bargaining agreements from that time through the events involved in this case. The latest IDCA agreement was effective from September 5, 1976, to, and including, September 1, 1979. (Resp. Exh. 1.)

One of the provisions in that agreement addressed the right of IDCA representatives to visit the stores for contract-related purposes. Specifically, this section of the agreement provided:

VISITS TO STORES:

It is agreed by both parties hereto that the business representative or any other person designated by the Association for such purpose shall have the right and shall be allowed by the Employer to visit any and all stores covered by this Agreement for the purpose of observing working conditions, making inquiries from the employees concerning working conditions, complaints of members of the Association and/or any violations of this Agreement. The Association agrees there will be no unnecessary visits or interference with the proper performance of the work of employees covered by this Agreement. [Resp. Exh. 1, p. 12.]

Sometime in April 1979, the Charging Parties began a campaign to organize the employees working in Raley's drug centers and drugstores. This campaign resulted in a Board-conducted election held on August 16. As previously noted, the IDCA received a majority of the votes cast, and the Retail Clerks filed objections to conduct alleged to have affected the results of the election.

B. The Alleged Unlawful Conduct by Raley's Supervisors at the Various Stores

After the Retail Clerks commenced its efforts to organize Raley's drug department employees in April, Mary Elliott, a pharmacy technician at Store No. 71 (Carmichael), became an active supporter of that Union in her store. According to the testimony of Elliott, she answered questions employees had about the Retail Clerks, passed out literature for that Union, and met frequently with the organizers of the Retail Clerks during her lunch hours or in the parking lot on breaks. Elliott testified that sometime in late April or early May she had been discussing the Retail Clerks' campaign with coworkers in the back room of the store while the then store manager, Gene Flick, was working nearby. According to Elliott, as she was leaving, Flick asked what she thought about the Retail Clerks. Elliott replied that she was a supporter of the Retail Clerks and had been a member of that Union when she worked for another employer. She also told Flick that the Retail Clerks had been helpful to her on several occasions.

Flick, on the other hand, denied that he ever asked Elliott her feelings about the Retail Clerks. He recalled that he and Elliott were in the warehouse pricing an order and engaging in a "general conversation." Flick stated that the upcoming election was mentioned during this conversation.⁶ It was at this time, according to Flick, that Elliott volunteered information that she was a supporter of the Retail Clerks, and that it had assisted her when her aunt needed an operation while Elliott was working for another employer. Flick testified he merely listened to Elliott's comments but never asked the employee how she felt about the Retail Clerks.

Employee Dixie Stermer, a drug clerk, worked at Store No. 63 located in El Dorado Hills. Stermer testified that, sometime in May, Larry Heise of the Retail Clerks came into the store and spoke with her. Later

⁶ The Retail Clerks' petition for an election was filed on June 6.

that same month, the store manager, Edward Pine, spoke to her in the back room of the store. According to Stermer, Pine stated that she would probably be contacted by a representative of the Retail Clerks and if she wanted to speak to that person she would have to do so outside the store on her own time. Stermer replied that she was interested in learning what the Retail Clerks had to say. At this point, according to Stermer, Pine said that he had been a member of that Union and Stermer would not want to hear about the Retail Clerks because of the "pressure and vandalism."⁷

Mary (Peggy) Baggerman, an employee at Store No. 62 in Placerville, testified that in early May Heise and another organizer for the Retail Clerks came into the store and spoke with her about the wage rates negotiated by the Retail Clerks for nonfood employees at the stores. Baggerman stated that, shortly after the union representatives left, she went into the back room and spoke with the store manager, Fred Hegy. According to Baggerman, she asked Hegy why the Retail Clerks was getting wages that were higher than the wages Rayley's employees were receiving. Baggerman stated that Hegy said, "This [talking to representatives of the Retail Clerks in the store] will not happen again." He told Baggerman that she could lose her job by talking to representatives of the Retail Clerks on company time. Baggerman further testified that Hegy repeated this admonition to her at least a half a dozen times prior to the holding of the election on August 16.

Hegy's testimony concerning this conversation differs with the version given by Baggerman. Hegy stated that Baggerman approached him and told him of her conversation with Heise at her work station. According to Hegy, Baggerman wanted to know if it was permissible to speak to representatives of the Retail Clerks while on the work floor or if she would be fired for doing so. Hegy stated that he told Baggerman not to do it again until he checked with his superior because he did not know the company policy. Hegy testified he called Robert Teel, drug center supervisor, and was informed that employees could not talk to representatives of the Retail Clerks while on duty because it violated the Company's no-solicitation rule.

Baggerman also testified that in mid-May Hegy told her and Dolly Richards, a coworker, that Kay Sordillo, secretary-treasurer of IDCA, was in his office, and he wanted the employees to talk to Sordillo about their insurance benefits, the Retail Clerks, or whatever complaints they had. Baggerman stated that she and Richards did not punch out, and the meeting with Sordillo lasted 2 hours. According to Baggerman, Sordillo talked about her recent surgery and how the insurance plan paid for it. In addition, she discussed the wages earned by Rayley's employees represented by the Retail Clerks in Nevada. After the conclusion of the meeting, Baggerman told Hegy that he "shot two hour's pay for the employees to listen about Sordillo's operation and how 'sorry' the Retail Clerks were."

Several weeks later, Sordillo returned to the store and spoke to Baggerman and other employees in the back room while they were still on the clock. She told the employees not to believe anything the Retail Clerks said and that Rayley's "would not go for a Retail Clerks' contract." According to Baggerman, Sordillo made periodic visits thereafter to the store, even though she had only visited the store once or twice a year prior to the organizing campaign of the Retail Clerks. On each visit until the election in August, Sordillo would always talk to Baggerman about the disadvantages of being represented by the Retail Clerks.

Hegy, on the other hand, testified that Baggerman and another employee had been complaining to him in May about their insurance coverage. He stated that, when Sordillo came to the store, she informed him that she wanted to talk with the employees about their various complaints. According to Hegy, he told the employees that Sordillo was in the store and, if they wanted to speak with her about their problems, they could do so. Hegy admitted that Sordillo had not been in the store for about 6 months prior to this visit. He further acknowledged that after the meeting Baggerman complained that 2 hours were wasted listening to Sordillo talk about her operation. He denied, however, that Baggerman mentioned that Sordillo was talking against the Retail Clerks or promoting support for IDCA during the meeting.

The Retail Clerks filed a petition on June 6 and the parties signed a Stipulation for Certification Upon Consent Election Agreement on June 29, agreeing to an election on August 16. Baggerman testified that several weeks prior to the election Hegy told her that George Kalafatich, a clerk in the grocery department of the store,⁸ could no longer come over to the drug department and have lunch with her or other drug department employees in the back room. Prior to this, it was customary for Kalafatich to come over to the drug department side at least two or three times a week from his work area in the grocery department to eat his lunch with the drug clerks in their back room. He followed this practice even though the grocery department employees had their own lunch or breakroom. Baggerman testified that Hegy said he did not want any representatives of the Retail Clerks or anyone "who thinks Retail Clerks" talking to his employees. Baggerman testified that Richards came up at the time, and Hegy repeated the same admonition to her.

Hegy testified that in late July and early August he observed Kalafatich coming over from the grocery department to eat his lunch with the drug department employees in their breakroom. He admitted that he watched Kalafatich for several days before deciding to put a stop to this practice. According to Hegy, he felt there was too much tension between the drug department employees over the competing Unions, and he told Kalafatich not to use the drug department breakroom until after the election. He stated that he explained his reason for the decision to Kalafatich as well as to the drug clerks. He

⁷ Pine was not presented as a witness at the hearing and Stermer's testimony concerning this conversation is unrefuted in the record.

⁸ Rayley's grocery and meat department employees were represented by the Retail Clerks and the Meatcutters which merged into one union (United Food and Commercial Workers) in June 1979.

further stated that Kalafatich readily agreed to accept his decision.

Finally, Baggerman testified that on August 14 Hegy asked if she was going to a meeting being held by the IDCA that evening. Baggerman indicated that she was not. Later that same day, Glenda Hammonds, the IDCA shop steward in the store, asked Baggerman the same question. When Baggerman replied that she was not going to attend the meeting, Hammonds said she was going and intended to tape the meeting on a portable recorder. The following day, according to Baggerman, Hammonds spent a good portion of her workday in the breakroom playing the tape for any of the employees who chose to listen. She asked Baggerman if she wanted to hear the tape and, when Baggerman refused, Hammonds turned the volume up so that Baggerman could hear it at her work station. At the end of the day, Baggerman overheard Hammonds asking the second assistant manager to lock the tape up in the "safe room."

Hammonds testified that she only played the tape during her lunch hour and denied that she asked Baggerman to listen. Hegy testified that when Hammonds told him she was going to tape the IDCA meeting he told her that if she played it back in the store she would have to do so on her own time. He stated that he saw Hammonds' recorder in the breakroom the following day.

At Store No. 59 (South Lake Tahoe), Lillian Louritt was employed as a drug clerk. Louritt testified that in early August, the store manager, Rick Sparks, came into the employees' breakroom. She observed Sparks go to the bulletin board where some campaign material from both Unions was posted. The IDCA material listed the wage scale of employees at Incline Village. The Retail Clerks' leaflet showed a wage scale for "non-food clerks," with the journeyman wage rate of \$5.96 underlined in red. Louritt testified that Sparks removed both pieces of literature and went into the next room where he made a telephone call. She overheard him mention the \$5.96 journeyman rate contained on the Retail Clerks' document. Several minutes later, according to Louritt, Sparks returned and reposted the IDCA literature but did not repost the document showing the Retail Clerks' wage scale.

Sparks testified that the only literature he ever saw posted on the bulletin board in his store was literature from the IDCA. He identified a survey questionnaire sent out to the drug department employees on June 7 by IDCA as the literature he noticed on the bulletin board in the store. (See Resp. Exh. 16.) Sparks specifically denied ever noticing any campaign material relating to the Retail Clerks and its journeyman rates posted in the store.

Mark Boggess, a drug clerk at Store No. 53 (Freeport) testified that in early August he was eating lunch in the store manager's office. He stated that Al Zimmerman, the second assistant manager, came in and asked how he was going to vote in the election. Boggess replied that he intended to vote in his own best interest. According to Boggess, Zimmerman then replied, "Good, your best interests lie with the Retail Clerks." Zimmerman went on to say that if the Retail Clerks got in, he (Zimmerman) would have to become a union member. That way

he could receive paid overtime on an hourly basis instead of a salary and would get at least 2 days off a week.⁹

C. The Announcement to the Employees at the Various Stores of the Improved Insurance Benefits

There is considerable testimony from employees at the various stores that representatives from the IDCA and a representative from the insurance carrier (Provident Mutual Life) handling the policy covering the employees' medical and welfare benefits came to the stores in July and August to explain that the benefits had been increased. James Teel, vice president in charge of operations, testified that this was done under his instructions. Teel stated that prior to 1977 Raley's negotiated for its health and welfare benefits through the Northern California Grocery Association and the insurance carrier was Firemen's Fund. When notified that Firemen's was going to increase its rates dramatically, Raley's dropped this carrier and changed to Provident Mutual, who was providing coverage for Raley's employees in stores located in Nevada. These latter employees were represented by the Retail Clerks and the Meatcutters.

According to Teel, Sordillo, the chief negotiator for the IDCA, was called into a meeting between him and Robert Gilbert, Provident Mutual's agent in Nevada. Sordillo insisted at the time that the California employees not experience a loss in benefits due to the change in insurance carriers. Teel stated that, as a result of this meeting in 1977, Sordillo extracted a verbal agreement from him that when the Nevada contract was negotiated by the Retail Clerks and the Meatcutters any increase in medical or welfare benefits over the California coverage would be granted to California employees.¹⁰ She also insisted, and management agreed, that IDCA would retain the right to negotiate further increases when its contract covering the northern California employees expired.

In March 1979, Raley's, as a member of the Reno Employers' Council, entered into negotiations with the Retail Clerks and Meatcutters for a new contract covering the Nevada stores. A memorandum agreement which contained certain changes in the health and welfare benefits was reached on April 8. (Resp. Exh. 14.) A final agreement was executed by the parties on July 31. (Resp. Exh. 15.)

Because certain provisions in the health and welfare benefits exceeded those of the northern California employees, Teel testified, he instructed Gilbert to update the California plan to place it in a parity with the increased benefits granted as a result of the Nevada negotiations. No changes were to be made in the California plan where it exceeded the benefits contained in the Nevada plan. These changes were to become effective for the northern California employees as of May 1, although the Nevada contract, as finally negotiated, was effective from February 11, 1979, to May 2, 1982. The

⁹ Although he testified as to other matters, Zimmerman did not refute the statements attributed to him by Boggess.

¹⁰ The health and welfare benefits in the IDCA agreement applied to all employees represented by that Union, all supervisors at the various stores, and to all nonrepresented employees.

new benefits for the northern California employees resulted in an increase in premiums of \$5.52 per month for each employee. This increase was to be paid in full by Raley's.

Gilbert testified that Teel gave him these instructions sometime in April—presumably after the memorandum agreement was signed. He stated, however, that the benefits were not instituted until the latter part of May and were made retroactive to May 1.

Teel stated that in early July he received a call from Sordillo saying that she had been receiving questions from employees at the various stores about the health and welfare coverage. She asked Teel to have Gilbert visit each store and explain the extent of the increased benefits to the employees. Teel called Raley's labor attorney for advice on this matter and was told that Gilbert could do this, but that he should remain neutral in the contest between the Retail Clerks and IDCA. Teel then instructed Gilbert to contact Sordillo and arrange to visit the stores in northern California to apprise the employees of the updated insurance and welfare benefits. He stated that he cautioned Gilbert not to make any comparison with any other plan.¹¹

Gilbert testified that he contacted Sordillo and they went to each store together to explain the update in the health and welfare coverage. He stated that he did not inform Sordillo that he had been told by Teel to confine his remarks merely to an explanation of the benefits. He further testified that it was not unusual for him to go to the places of employment to explain the benefits to employees. He stated there were times when he did this on request of the union or the employer involved, and he was usually accompanied by a representative from management, the union, or both.

Gilbert further testified that on his visits to Raley's stores with Sordillo he merely informed the employees of the new benefits they would now receive under the updated insurance coverage. He passed out a list to the employees showing the schedule of benefits provided by the current plan. (G.C. Exh. 7.)¹² He also stated that, while he adhered to Teel's instructions, he did make a comparison at two stores between the new coverage and benefits offered by Retail Clerks' plans in northern California. Gilbert testified that in the Pittsburg and Antioch stores, employees specifically asked him to compare the updated dental coverage with that provided by the Retail Clerks in northern California, and he did so. However, he testified that he could not recall ever telling employees that the updated medical and welfare coverage under the IDCA contract was better than that contained in contracts negotiated by the Retail Clerks in northern California.

¹¹ Teel testified that, although Raley's management had decided to adopt a neutral position in the struggle between the Retail Clerks and IDCA, it favored the IDCA as the collective-bargaining representative of its employees.

¹² Gilbert stated there was normally a 3-to-4-month timelag between the effective date of the insurance coverage and the actual printing up of a certificate booklet containing full explanations of the coverage by his home office. Certificate booklets were subsequently printed up and provided to Raley's by his home office for distribution to the employees. (G.C. Exh. 5.)

The testimony of several employee witnesses who attended these meetings with Gilbert and Sordillo differs somewhat from that of Gilbert. Ola Helzen, a clerk at Store No. 59, testified that on July 9 she was called from the sales floor by the store manager and told to attend a meeting between employees and Gilbert. She stated that Norm Galonka, the assistant manager, also attended this meeting. According to Helzen, Sordillo introduced Gilbert to the employees and he explained the improvements in their insurance coverage. Helzen stated that on two occasions, Gilbert told the employees that the benefits they were now receiving were superior to those negotiated by the Retail Clerks in northern California. She also testified that she did not recall ever hearing Gilbert say the improved benefits were the result of negotiations between Raley's and the Retail Clerks in Nevada.

Louritt also testified regarding a meeting with Gilbert in Store No. 59. She stated that the store manager set up chairs in the back room and instructed the employees to attend the meeting. The managers also attended because as salaried employees they were covered by the same insurance program. While Louritt corroborates Helzen's testimony that Sordillo introduced Gilbert to the employees, she recalled that Gilbert said the new benefits were as good as the benefits offered by the Retail Clerks in northern California.

Mary Elliott testified concerning the meeting held in Store No. 71 in Carmichael. According to Elliott, on July 30 Gilbert appeared at the store and spoke with the employees in the warehouse area. Gilbert told the employees of the increased insurance benefits they would now receive and that the benefits were retroactive to May 1. He handed the employees a list setting forth the benefits (G. C. Exh. 3). At no time, however, during her testimony regarding this meeting, did Elliott state that Gilbert compared the new benefits with those offered by the Retail Clerks in northern California.

D. The Enforcement of Raley's No-Solicitation Rule

James Teel testified that Raley's had a no-solicitation rule in effect in its stores for at least 30 years. Teel stated that this rule was never reduced to writing, but that Raley's had always enforced it. Under this rule, solicitations could not be made of employees while working, but had to take place outside the store on their own time. Robert Teel, brother of James and supervisor of the drug centers, testified that in June he went to James and informed him that a number of the managers were asking questions about their role in the election campaign. He suggested that top management meet with the store managers to establish Raley's official policy on the election. As a result, Raley's attorney met with the managers and supervisors and instructed them to adopt a role of neutrality between the competing Unions. The managers were told to enforce the no-solicitation rule against all campaigning in the stores. James Teel testified that Raley's decided to treat the representatives of the Retail Clerks as "outside solicitors" and require them to meet with employees outside the stores on the employees' own time. Regarding the IDCA, Teel stated that the managers were told that the representatives of that Union had a

right to come into the stores to administer and enforce the terms of the collective-bargaining agreement so long as they did not interfere with employees while working. However, according to Teel, the managers were also told that, if they observed the IDCA representatives campaigning among the employees, they were to enforce the no-solicitation rule against them as they would against any representative of the Retail Clerks.

The testimony of several employee witnesses, however, indicates that IDCA representatives campaigned extensively in the stores. Louritt testified that on July 9 (the day of the meeting with Sordillo and Gilbert) Sordillo came into Store No. 59 and spoke with her while she was working at the cosmetic counter. Sordillo was accompanied by Joann Schuster, vice president of IDCA, and another woman. According to Louritt, Sordillo introduced Schuster to her and identified the other woman as a cosmetician from Raley's Freeport store.¹³ Louritt testified that Sordillo asked how the employees felt about the Unions. Sordillo replied she did not know and would make up her own mind. Schuster then told Louritt the Retail Clerks would promise the employees anything but would settle for far less. Louritt disagreed with this statement and said the Retail Clerks would have to negotiate terms and come back to the employees for approval. According to Louritt, the conversation with Sordillo and Schuster lasted for approximately 15 minutes. Sara Morris, another clerk at Store No. 59, was the IDCA steward for that store. Morris testified that in the past she had always made contact with Sordillo by telephone regarding employee problems at the store.¹⁴ She stated that in late June or early July Sordillo came into the store accompanied by her husband and another person. Sordillo told Morris that she had come to take her out to lunch and that it might run overtime. Morris told Sordillo to get permission from the manager (Spurgeon) in charge at the time. They went to Spurgeon and Sordillo told him she was taking Morris out to lunch and that it might run overtime. Spurgeon gave them permission to do so. Morris clocked out and they went to lunch. While there, Sordillo asked Morris how a majority of the employees in the store felt about the Retail Clerks. Morris replied that the employees were not satisfied with the representation they had been getting from the IDCA. They then proceeded to discuss the election campaign in general and Morris stated that there was no discussion regarding any specific employee complaint or matters involving contract administration. The meeting lasted 1-1/2 hours although Morris was only permitted 1 hour for lunch. Morris testified that when she returned to work nothing was said to her by anyone from management nor were her wages docked because she had taken an extended lunch hour.

Teresa Baker, an employee at Store No. 59, testified that in late July Jack Oie, president of IDCA, accompanied by Schuster, came into the store and told her and a

coworker (Ron Forkner) that the union representatives wanted to take them out for coffee. Oie went over to Assistant Manager Galonka and received permission for the employees to leave. Baker testified that she did not clock out and they went to a nearby coffeeshop. There Oie told the employees that IDCA would get them a 10-percent wage increase but that the Retail Clerks would settle for a "sweetheart contract." He also told the employees that under the Retail Clerks the older employees would lose their pensions. This meeting between the employees and the IDCA representatives lasted for an hour. Baker testified that when she returned to her work station nothing was said about her absence by the assistant manager nor was her pay docked for being away from the store.

Melody Wroblewski, a pharmacy clerk at Store No. 69 (Auburn), testified that in late July, Sordillo had a conversation with her in the pharmacy area about the pending election. Sordillo asked the employee if the Retail Clerks had been in to see her. She also asked what Wroblewski thought about the IDCA and the Retail Clerks. Wroblewski replied that she wanted to hear both sides before making up her mind. Wroblewski further testified that in early August Schuster came into the pharmacy area of her store and asked Wroblewski how she intended to vote. At no time during these conversations with Sordillo or Schuster did any of her supervisors or managers speak to her about conversing with the IDCA representatives while on duty.

Cindy Gesinger, another drug clerk at Store No. 59, stated that in late July or early August, Oie and Schuster came up to her in the camera department. They asked Gesinger to go out to have coffee with them. Gesinger responded that she was not scheduled for a break and Oie stated that it was all right because "they" [management] knew the union representatives were in the store. Gesinger testified that she left with Oie and Schuster without requesting permission from her manager. At the coffeeshop, Oie told Gesinger that if the Retail Clerks won it would sign a "sweetheart contract." He also stated that if the Retail Clerks won the election Raley's would tie it up in court for 2 years and the employees' wages would be frozen. The conversation between the IDCA representatives and Gesinger lasted for approximately a half hour. Gesinger testified that when she returned to the store she was never questioned about her absence. Gesinger further testified that on August 15—the day before the election—Oie came into the stockroom of the store where she was working. He gave Gesinger a pamphlet purportedly stating the "truth" about the Retail Clerks and urging support for the IDCA. (G.C. Exh. 6.) Gesinger testified that Oie also posted a copy of the document on the employees' bulletin board.

Stermer from Store No. 63 testified that on August 13 Oie and Schuster came into her store and spoke with her in the back room while she was getting stock. Schuster introduced Stermer to Oie as the new "third man" of the store.¹⁵ Oie asked Stermer if she had been invited by the

¹³ Louritt stated that, prior to this encounter, she had never talked with Sordillo in the store. She stated her only contacts with Sordillo were at IDCA meetings away from the store.

¹⁴ Morris stated that during her term as steward she had never filed a written grievance. Morris gave up her steward's position in September 1979.

¹⁵ Stermer was to receive a promotion as the second assistant manager in the store. All second assistant managers were commonly referred to by the employees as the "third man" in charge of the store.

clerks to play racketball and also if she knew how a co-worker was going to vote in the election. Stermer indicated that she did not know the information sought by Oie. According to Stermer, 2 days later, Oie spoke to her on the drug floor and gave her several copies of the so-called "truth pamphlet" to distribute to the other employees. He told Stermer that IDCA had to win the election.

Wroblewski of Store No. 69 also testified about an encounter she had with an organizer of the Retail Clerks at her store. Wroblewski stated that in mid-July a Retail Clerks' organizer (Greg Cory) came into the store to talk with employees. He asked Wroblewski if he could speak with her after work and she agreed. Approximately 10 minutes thereafter, Assistant Manager Russ Hicks came over to Wroblewski and asked if Cory was connected with the Retail Clerks. When Wroblewski responded he was, Hicks told her she was not to talk to union organizers on company time. Wroblewski testified that on another occasion, Cory again came to the store and spoke with her. She stated that Hicks came up to her and asked what Cory wanted and she replied that he wanted to talk. According to Wroblewski, Hicks stated that, if Cory kept coming in and talking with her, he would have to report the situation to the store manager.

Oie and Sordillo testified regarding their conduct during the election campaign. Oie was the pharmacist at Store No. 71 and Sordillo was a full-time employee at another store.¹⁶ Sordillo testified that when the petition was filed by the Retail Clerks she took an unpaid leave of absence for 2 months with an option to extend it if needed. Oie and Schuster took unpaid leave on a day-to-day basis as they saw fit during the election campaign.

Oie acknowledged that he frequently spoke to employees at various stores about the pending election. He asserts, however, that he always deceived management into believing that he was dealing with employee complaints or administering contract problems. He further stated that when he passed out leaflets to Gesinger and Stermer the store managers were unaware of his activities. He also testified that Assistant Manager Galonka became angry with him when he kept employees Baker and Forkner out to coffee for an extended period of time. He stated that he lied to Gesinger when he indicated to the employee that management knew he was in the store and gave him permission to take her out on an unscheduled coffeebreak.

Sordillo testified that several store managers gave her a "hard time" when she visited the stores. She asserted they wanted to be certain she was in the store for purposes of administering the contract and not for campaigning among the employees.

E. The Transfer of Elliott

As previously noted, Elliott worked as a pharmacy technician in Store No. 71 in Carmichael and was a chief supporter of the Retail Clerks. Alonzo Moore was the head pharmacist at Store No. 71 and Oie worked there as a pharmacist.

Elliott testified that, prior to the campaign of the Retail Clerks, she and Oie enjoyed a good relationship. On one occasion during the Christmas season in 1978, Elliott was short of funds and Oie loaned her \$400. At the time of the hearing, Elliott had repaid only \$100 of this amount to Oie. However, it is apparent from the testimony that the outstanding indebtedness had not interfered with their relationship. It was not until the advent of the Retail Clerks' campaign that the relationship between them deteriorated from one of friendly bickering over the relative merits of the rival Unions to one of deep enmity.

Elliott testified that in early June she and Oie used to "kid" each other about the campaign of the rival Unions. She stated that in late June Oie asked her to campaign with him at other stores for IDCA and she refused, stating she was busy. In the latter part of July, however, the friendly nature of their rivalry changed when she and Oie were discussing the differences between the Retail Clerks and IDCA. According to Elliott, Oie told her that if she did not vote for IDCA in the pending election "it would put a strain" on their relationship.

On August 9, according to Elliott, there was a meeting of the employees in the store regarding pension benefits. As she was returning to the pharmacy after the meeting, she saw one of the organizers from the Retail Clerks, Mike Vespoli, and exchanged greetings with him. Elliott testified that Oie observed her and told Sordillo, who was also in the store at the time, that "guys from the clerks were in the store." Elliott further testified that in the pharmacy area Oie told her that he knew she was working against him, and "[he was] going to make it so f—king hard for [her] that it was going to be unbelievable." Elliott stated that she was upset over Oie's threat and, when Moore came in, he inquired as to what was wrong. Elliott repeated Oie's statement to him and Moore said, "This has gone too far." She said Moore stated the differences between Elliott and Oie were disrupting the operation of the pharmacy. He promised to speak to Oie, who had left the pharmacy area before Moore arrived.

Sometime over the weekend of August 12, Elliott's apartment was broken into and ransacked. When she returned to work on August 14, she told several employees and Moore that she felt the breakin was due to the union conflict and that Oie was involved in some manner.

During the day, Elliott met Schuster in the store. There was an IDCA meeting scheduled for that evening and Schuster said Elliott was not wanted at the meeting. When Elliott reminded Schuster that she was still a member of IDCA, Schuster replied, "The pharmacy people stick together and we flat don't want you coming around."¹⁷ Elliott reported this conversation to Moore, who she testified later told her he ordered Schuster to get out of the store. According to Elliott, Moore told her to go to lunch and calm down.¹⁸ Elliott stated that

¹⁷ Elliott attempted unsuccessfully to gain admittance to the IDCA meeting that evening at a local motel.

¹⁸ According to Elliott's affidavit, she asked Moore for the afternoon off and he granted her request. She then left the store and telephoned Heise who advised her to calm down and return to work.

¹⁶ Schuster was also a full-time employee at one of Rayley's stores.

when she punched back in, Moore advised her that he had talked to the pharmacy supervisor and Elliott would be transferred to another store.

Elliott testified that she was transferred to Store No. 52 in North Sacramento on August 20. She stated she had to commute 15 miles from Carmichael to the store as opposed to a 2-mile commute from her home to Store No. 71. Elliott also stated that the store in North Sacramento was an old store located in a bad part of town. She acknowledged that since the transfer she has received a merit wage increase and that Teel said she was doing a good job.

Moore testified that he was aware of the breakdown of the working relationship between Elliott and Oie after the commencement of the organizing campaign by the Retail Clerks. He stated that there was constant bickering in the pharmacy area between the two and it interfered with customer service. Because of this, he advised the two employees "to cool it." On August 9, according to Moore, Elliott told him of Oie's statement as to how hard he was going to make it for her. Moore said he spoke to Oie and warned him not to engage in any further such conduct toward Elliott.

After Elliott's apartment was broken into, she told Moore she thought Oie was involved in some way. Moore testified that he became concerned about Elliott's accusation and telephoned Oie to advise him what Elliott had been saying. He stated Oie denied any involvement and became upset himself. Moore then called Flick, the district manager, and suggested they get together to resolve the problem at the store.

According to Moore, Flick came to the store that afternoon and it was decided that Flick would initiate a transfer of one of the employees. Elliott was the likely choice because Oie had more seniority and worked well with Moore. In addition, according to Moore, there were several other considerations that influenced the decision to select Elliott as the one to be transferred. Another drug clerk with more seniority than Elliott had expressed a desire to transfer to Store No. 71. Also, the store to which Elliott would transfer had a computer terminal and he and Flick felt Elliott had the capacity to learn this additional skill. Moore stated that, when he informed Elliott of the decision to transfer her, she threatened to quit. He then persuaded her not to do so by telling her the transfer provided her with an opportunity to learn other skills (operation of the computer terminal), which could prove valuable to her in the future.

As to Elliott's testimony about her confrontation with Schuster that day and Moore's reaction to it, Moore asserted he had no recollection of Elliott being upset over a conversation with Schuster. However, he did admit on cross-examination that he told Schuster not to make any trouble in the store and not to campaign during visits there.

Flick testified that on August 14 Moore told him the problems between Elliott and Oie were disrupting the pharmacy. He further stated that earlier that day he had encountered Oie accompanied by Schuster at Store No. 60, one of the stores in his district. According to Flick, Oie related that working conditions between Elliott and him had become strained because she had accused him of

being involved in the breakin at her apartment. Flick said he became concerned over the situation and went to Store No. 71 to discuss the matter with Moore. After talking with Moore, he decided to transfer Elliott because the conflict was interfering with the operation of the drug department of the store.

Concluding Findings

Raley's asserts that its management adopted and maintained a policy of neutrality during the campaign of the Retail Clerks to unseat the IDCA as the collective-bargaining representative of the unit employees. Raley's contends that this neutral posture was announced to and carried out by all of its managers and supervisors in the stores, even though management preferred to have IDCA continue to represent the employees. I find that, contrary to this professed policy of neutrality, the record evidence establishes that several of the store managers engaged in conduct which made it clear to the employees that management was opposed to having them represented by the Retail Clerks. I further find that this conduct interfered with the right of the employees to freely select their bargaining representative in violation of the Act.

Elliott testified that Flick asked her views about the Retail Clerks in May when she was discussing that Union with other employees in the back room. Although Flick testified that he and Elliott were in the warehouse engaged in a general discussion about the pending election and Elliott voluntarily expressed her preference for the Retail Clerks, I do not credit him in this regard. Elliott impressed me as forthright and candid in her testimony, and I find her account of this particular incident to be more reliable than the testimony given by Flick. Therefore, I find that Elliott responded to a specific question put to her by Flick. It is evident from the testimony of both Elliott and Flick that Elliott had no hesitancy in expressing her views nor did her relationship with Flick change thereafter. However, the absence of fear on the part of an employee when responding to a question about union preference is not the test by which to judge such inquiries by a supervisor. Flick was the store manager at the time he spoke with Elliott and there was no justification for his inquiry. Nor did he give the employee any assurances at the time that she would not experience any reprisals if she chose to respond to his question. As the Board has stated:

An employee is entitled to keep from his [or her] employer his [or her] views concerning unions, so that the employee may exercise a full and free choice on the point, uninfluenced by the employer's knowledge or suspicion about those views and the possible reaction to the employee that his [or her] views may stimulate in the employer. [*Quemetco, Inc., a subsidiary of RSR Corporation*, 223 NLRB 470 (1976).]

Accordingly, I find that the interrogation of Elliott by Flick regarding her views on the Retail Clerks was unlawful and violated Section 8(a)(1) of the Act. Cf. *Laredo Coca Cola Bottling Company*, 241 NLRB 167 (1979).

I also find the conversation between employee Stermer and Store Manager Pine to be a violation of Section 8(a)(1) of the Act. Stermer's testimony is unrefuted that, when Pine told her she would probably be contacted by a representative of the Retail Clerks and she would have to speak to that person outside the store on her own time, she stated she was interested in what the Retail Clerks had to say. It was at this point that Pine told the employee she really did not want to hear from the Retail Clerks because of "pressure and vandalism." These remarks were clearly intended to denigrate the Retail Clerks in the eyes of the employee and were not mere expressions of opinion protected by Section 8(c) of the Act. I find, therefore, that by making these statements to Stermer Pine was interfering with her right to freely decide whether she wanted to be represented by a union and, if so, which one. Accordingly, I find that by Pine's remarks to Stermer Respondent Raley's has committed an additional violation of Section 8(a)(1) of the Act. Cf. *Lehigh Lumber Company and Brown-Borhek Company*, 230 NLRB 1122 (1977).

The testimony also establishes that at Store No. 62 in Placerville Raley's professed neutrality was breached by Store Manager Hegy. When employee Baggerman asked Hegy in May why the wage scales negotiated by the Retail Clerks were higher than the wages the employees were receiving from Raley's, he told the employee she could lose her job for talking to representatives of the Retail Clerks on company time. Although Hegy testified that Baggerman asked him if she would lose her job for talking to union representatives at her work station, I do not credit his testimony. As a witness, Hegy impressed me as one shading the truth and tailoring his answers so as to avoid any suspicion of unlawful conduct. Therefore, where his testimony conflicts with that of Baggerman, or any other employee, I do not credit him. Accordingly, I find that Hegy warned Baggerman on several occasions that her employment would be in jeopardy if she talked with representatives of the Retail Clerks on company time.

In contrast to this, Hegy instructed Baggerman and Richards to go to his office in mid-May while they were on duty to meet with Sordillo to discuss any problems they had about their insurance coverage, any questions concerning the Retail Clerks, and any other matters they wished to air. When Baggerman told Hegy after the meeting that the Company had wasted 2 hours' pay for the employees to listen about Sordillo's surgery and to hear her talk against the Retail Clerks, Hegy took no action whatsoever against Sordillo for campaigning among the employees during their working hours. Thus, his actions made it clear to the employees that he endorsed Sordillo's campaigning activity.

Nor did Hegy's opposition to the Retail Clerks end here. Several weeks before the election, Hegy stopped Kalafatich, the employee from the grocery department of the store, from eating his lunch with the drug clerks in the breakroom of the drug department until after the election was over. As explanation for this action, Hegy told Baggerman and Richards that he did not want any representative of the "Clerks or anyone who thinks Retail Clerks" talking to the drug department employees.

Finally, on August 14, Hegy asked Baggerman if she intended to go to the IDCA meeting that evening. There was no legitimate purpose for making this inquiry other than to further let the employee know of his preference for the IDCA. The following day, after employee Hammonds had taped the meeting, Hegy permitted her to play the tape repeatedly in the breakroom, even during times when she was supposed to be on the sales floor.

On the basis of the above, I find that Hegy actively sought to interfere with and restrain the drug department employees in his store from freely exercising their right to choose their bargaining representative and assisted and supported the representatives of IDCA in their efforts to persuade the employees to vote for that Union. It is basic that such conduct is proscribed by the Act and violates Section 8(a)(1) and (2). *Samuel Liefer and Harry Ostreicher, a Copartnership, d/b/a/ River Manor Health Related Facility*, 224 NLRB 227 (1976).

Employee Louritt testified that she observed Store Manager Sparks remove IDCA and Retail Clerks literature from the employee bulletin board in the store, make a telephone call where he reported the journeyman rate noted on the Retail Clerks material, and then repost only the IDCA literature. While Sparks denied ever seeing any material relating to the Retail Clerks posted in his store, he never refuted Louritt's testimony regarding making the telephone call concerning the journeyman rate of the Retail Clerks on that occasion. I view this omission to be deliberate and indicative of the fact that Sparks' testimony was unreliable and unworthy of belief. I therefore find that the incident occurred as related by Louritt. I further find that the removal of the Retail Clerks' literature from the employee bulletin board while reposting that of IDCA was a conscious effort on the part of Sparks to assist and support IDCA by removing from employee consideration any material in the store which might cause the employees to favor the Retail Clerks over the incumbent union. Thus, I find that by Sparks' actions Respondent Raley's violated Section 8(a)(2) and (1) of the Act.

Finally, Raley's claim of neutrality has been further dispelled by the interrogation of employee Boggess by second Assistant Manager Zimmerman at Store No. 53. Although Zimmerman was called as a witness, none of his testimony related to the incident described by Boggess. Therefore, I credit the statements of Boggess and find the interrogation occurred as he described. Zimmerman asked the employee how he intended to vote in the election. When Boggess replied he would vote in his own best interest, Zimmerman supported this position and indicated his interests were best served by the Retail Clerks because he (Zimmerman) would profit in some way. While Zimmerman expressed support for the Retail Clerks in this conversation, it was nevertheless unlawful. As noted previously, employees are entitled to keep their own union preferences and sympathies to themselves so that they may exercise a full and free choice on whether to select a union or not. *Laredo Coca Cola Bottling Company, supra; Quemetco, Inc., supra*. I find, therefore, that Zimmerman's interrogation of Boggess was unlawful and constituted a violation of Section 8(a)(1) of the Act.

The complaint alleges that the announcement and granting of the increased health and welfare benefits to the employees in July and August was for the purpose of inducing the employees to select incumbent IDCA as their bargaining representative and to discourage support for the Retail Clerks. While I do not find the granting of the increased benefits to be a violation, I do find that the manner and the timing of the announcement of the increased benefits warrants the conclusion that it was done in this fashion so as to influence the employees when they voted in the pending election.

It is well established in Board law that, during the pendency of a representation election, an employer's "legal duty in deciding whether to grant benefits . . . is to determine that question precisely as if a union were not in the picture." *Newport Division of Wintex Knitting Mills, Inc.*, 216 NLRB 1058 (1975); *McCormick Longmeadow Stone Co., Inc.*, 158 NLRB 1237, 1242 (1966). It is also well established that an announcement of the granting of increased benefits while a representation petition is pending will be regarded as interfering with employee freedom of choice unless the employer establishes a justifiable motive for this action. *Newport Division of Wintex Knitting Mills, Inc.*, *supra*; *Colonial Knitting Corp.*, 187 NLRB 980 (1971); *The Baltimore Catering Company*, 148 NLRB 970 (1964).

In the instant case, Teel and Gilbert credibly testified that in 1977 when Raley's decided to change its insurance carrier Sordillo was called in and she and management entered into a verbal agreement regarding the health and welfare benefits to be applied to the northern California employees.¹⁹ Under this arrangement, any superior benefits negotiated by the Retail Clerks for Raley's Nevada employees would be granted to the northern California employees. Since the testimony discloses that the negotiations between Raley's and the Retail Clerks in 1979 resulted in a memorandum agreement in April which gave the Nevada employees health and welfare benefits exceeding the northern California benefits, it was incumbent upon Raley's to change the benefits which were to be applied to the latter group. Because the testimony discloses that the Nevada contract was to be retroactive to February 11 and the final agreement was not executed until July 31, it is evident that Teel arbitrarily selected May 1 as the date the increased benefits would apply to the California employees. As counsel for the Retail Clerks correctly observed, there is no logical connection between the effective date that the benefits would become operative in northern California and the execution of the memorandum agreement and the final contract with the Retail Clerks in Nevada. I do not view this, however, as an indication of anything other than the fact that Teel simply chose May 1 as the date the benefits would apply to the California employees. The central point here, in my view, is that Raley's had an obligation to increase the health and welfare benefits of the California employees pursuant to the verbal agreement with Sordillo. I therefore credit Gilbert's testimony that he was instructed by Teel in late

April to change the California plan to reflect the increased benefits resulting from the Nevada negotiations.²⁰

In my judgment, the critical circumstances to be examined here are the timing and the manner in which the increased benefits were announced to the employees. The testimony of Gilbert reveals that in 1977 when Provident Mutual took over the insurance coverage there was one meeting at Raley's main office in Sacramento to explain the benefits to the employees. In contrast to this, Teel instructed Gilbert to arrange with Sordillo to visit each of the northern California stores to explain the increased benefits to the employees. Furthermore, it was known at least by mid-May that the benefits would be increased but it was not until July and August—the period immediately preceding the election—that Gilbert and the IDCA representatives visited the stores to announce and explain the increases to the employees. While Gilbert and Teel testified that Gilbert was instructed not to make comparisons between the increased benefits and the health and welfare plans negotiated by the Retail Clerks in northern California, it is evident from the testimony of the employees, which I find credible, that comparisons were in fact made. Indeed, Gilbert admitted that in two stores (Antioch and Pittsburg) he made a comparison of the dental benefits in response to employees' questions. I find, however, that he made such comparisons on other occasions. It is also evident from the testimony that neither Gilbert nor Sordillo told the employees the increases in their benefits were the result of the negotiations between Raley's and the Retail Clerks for the Nevada employees.

It is these circumstances that cause me to conclude that Raley's seized upon the results of the Nevada negotiations with the Retail Clerks as an opportunity to influence employee support for the Union it favored and to discredit the Retail Clerks. By having Sordillo and other IDCA representatives accompany Gilbert to each of the stores to announce the increased benefits; by not explaining to the employees why the increases were being given; by causing the visits to be made during the period immediately preceding the election wherein the employees would have to choose between the competing Unions; and by comparing the increased benefits with plans negotiated by the Retail Clerks in northern California, it is quite evident that Raley's was attempting to influence the employees' selection of a bargaining representative and interfere with their freedom of choice guaranteed by the Act. Accordingly, I find that by this conduct Raley's violated Section 8(a)(1) of the Act. *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405 (1964); *Arrow Elastic Corporation*, 230 NLRB 110 (1977), *enfd.* 573 F.2d 702 (1st Cir. 1978); *Essex International, Inc.*, 216 NLRB 575 (1975); *Newport Division of Wintex Knitting Mills, Inc.*, *supra*.

The next issue to be addressed here is Raley's enforcement of its no-solicitation rule.²¹ Teel testified that the

¹⁹ Although General Counsel and counsel for the Retail Clerks questioned the veracity of Gilbert and Teel concerning the verbal agreement with Sordillo, I credit their testimony on this point.

²⁰ Gilbert's testimony in this regard is supported by his letter dated May 15 sent to Raley's personnel director. (G.C. Exh. 8.)

²¹ Although the no-solicitation rule was not in writing, I credit the testimony of Teel and find that it had been a rule of long standing.

managers were instructed to enforce the rule against both Unions and there was to be no campaigning in the stores. However, the representatives of IDCA were to be permitted in the stores to handle employee grievances and matters relating to the administration of the contract. As has been noted, the application of this policy prevented representatives of the Retail Clerks from communicating with the employees in the stores but allowed the IDCA representatives to freely campaign among the employees while they were working. Furthermore, it is more than apparent that the IDCA campaigning in the stores was conducted with the knowledge and consent of the various store managers. The testimony of the witnesses for both General Counsel and Raley's clearly indicates that, prior to the election campaign, representatives of IDCA rarely visited the stores more than once or twice a year. Indeed, Morris, the IDCA steward at the store in South Lake Tahoe, stated she dealt with Sordillo over the telephone when there were employee problems that required the Union's attention. In sharp contrast to this pattern of infrequent visits, after the start of the Retail Clerks' campaign to unseat IDCA, Sordillo, Schuster, and Oie became frequent visitors to all of the stores. Their presence at the stores was never questioned by the managers. The testimony of Morris, Stermer, Gesinger, and Baker stands unrefuted that the store managers allowed them to take unscheduled breaks or extended lunch hours to talk with the IDCA representatives whenever they appeared at the stores. Although Oie and Sordillo testified that they deliberately deceived the managers by pretending to be in the stores on legitimate contract business, I find their statements in this regard to be unpersuasive. Rather, the facts warrant the inference that they were given carte blanche authority by the managers to freely campaign in the stores. Indeed, the credited testimony of Baggerman shows that Store Manager Hegy did not question Sordillo's conduct even after Baggerman put him on notice that Sordillo spent the employees' time campaigning against the Retail Clerks.²²

Thus, I find that by threatening employees with discharge or discipline if they talked with representatives of the Retail Clerks in the store (Baggerman and Wroblewski), while granting employees extended lunch hours (Morris) and unscheduled coffeekes (Gesinger and Baker) to talk to representatives of IDCA, and by failing to question the frequency of the visits to the stores by the IDCA representatives, even when informed by employees that the representatives were campaigning, the managers assisted and supported that Union in seeking employee support in the pending election. Cf. *Union Bus Terminal of Dallas, Inc.*, 231 NLRB 347 (1977); *Glassmaster Plastics Company*, 203 NLRB 944 (1973); *Northern Metal Products Company*, 171 NLRB 98 (1968).

Finally there is the question of the transfer of Elliott to another store because of the conflict between her and Oie over the competing Unions. In my judgment, this transfer was not for discriminatory reasons. It is apparent from the testimony of all involved, including Elliott, that

the dispute between these two adherents of the rival Unions had become so intense and heated that it interfered with the operation of the pharmacy and resulted in a breakdown in service to the customers. Moore, the head pharmacist, had to intervene on several occasions by telling the employees to "cool it" and by warning Oie about expressing threats to Elliott. It is also evident that, after Elliott made known her suspicions to several employees and Moore, Oie was somehow involved in the breakin and ransacking of her apartment, the working relationship between these two employees was completely shattered. Clearly then, management had an obligation to intervene in order to restore harmony in the pharmacy and to protect the quality of service to its customers.

I find the explanations offered by Flick and Moore for selecting Elliott for transfer to another store to be persuasive and based on sound business judgment. Moreover, I note that the transfer did not result in a demotion for Elliott but, rather, was to a store where she could acquire an additional job skill. In addition, the transfer did not take effect until after the election and since being transferred Elliott has received a merit pay increase.

In these circumstances, it can hardly be said that Elliott's transfer was discriminatorily motivated. I find, therefore, that the allegation of the complaint asserting that Raley's transferred Elliott for unlawful reasons must be dismissed. I further find that there is no evidence in the record to support the allegation that Oie or any other IDCA representative threatened to cause or did cause Elliott's transfer because she was a supporter of the Retail Clerks. Therefore, this allegation against the IDCA must likewise be dismissed.

The Objections to the Election

In light of the above findings, it follows that the objections of the Joint Petitioners to Raley's conduct prior to the election have merit and must be sustained. Specifically, Objection 1 relating to the manner in which the increased health and welfare benefits were announced to the employees at each store must be sustained because it is clear that this conduct was calculated to influence the employees' choice of a collective-bargaining representative in the pending election. *Arrow Elastic Corporation, supra*; *Newport Division of Wintex Knitting Mills, Inc., supra*. Likewise, Objection 2 relating to the unfettered solicitation of employees by representatives of IDCA in all areas of the store during working hours while enforcing the no-solicitation rule against representatives of the Retail Clerks must be sustained. By this conduct Raley's clearly demonstrated favoritism for the incumbent Union and thereby interfered with the election process. *River Manor Health Related Facility, supra*; *Glassmaster Plastic Company, supra*.

As to Objection 3, there is no evidence in the record to support the contention that IDCA representatives were keeping a list of names of Retail Clerks supporters or that they threatened these supporters with transfer to far-distant stores after the election. Therefore, it will be recommended that this objection be overruled.

Accordingly, it is recommended that Joint Petitioners' Objections 1 and 2 be sustained, that Objection 3 be

²² I also note at this point that, when Hegy sent Baggerman and Richards to his office to talk with Sordillo, he told the employees they were being sent there to discuss their medical insurance, the Retail Clerks, and any other problems they may have had.

overruled, and finally that a new election be conducted after the unfair labor practices found herein have been remedied in the required fashion.

CONCLUSIONS OF LAW

1. Respondent Raley's is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Independent Drug Clerks Association and Retail Clerks Union, Locals 373, 588, and 1179, affiliated with the United Food and Commercial Workers International Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By unlawfully interrogating employees about their union membership, sympathies, and activities, Respondent Raley's has violated Section 8(a)(1) of the Act.

4. By threatening employees with discharge or discipline if they spoke to representatives of the Retail Clerks on company time while allowing representatives of IDCA to freely campaign among the employees in all areas of the stores, Respondent Raley's has violated Section 8(a)(1) and (2) of the Act.

5. By unlawfully announcing the granting of increased health and welfare benefits in order to induce the employees to select the incumbent IDCA as their bargaining representative and to discourage employee support for the Retail Clerks, Respondent Raley's violated Section 8(a)(1) and (2) of the Act.

6. By removing campaign literature of the Retail Clerks from the employees' bulletin board while allowing literature from the incumbent IDCA to remain posted, Respondent Raley's has violated Section 8(a)(2) and (1) of the Act.

7. Respondent Raley's did not violate Section 8(a)(1) and (3) of the Act by transferring employee Mary Elliott to another store.

8. The record evidence does not establish that Respondent Independent Drug Clerks Association violated Section 8(b)(1) or 8(b)(2) of the Act.

9. The above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Raley's has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. It shall also be recommended that the election held on August 16, 1979, be set aside and that Case 20-RC-14833 be remanded to the Regional Director for Region 20 for the purposes of conducting a new election at such time as it is deemed the circumstances will permit a free choice of a bargaining representative.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²³

The Respondent, Raley's, Inc., Sacramento, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees about their union membership, sympathies, or activities.

(b) Threatening employees with discharge or discipline if they speak to representatives of the Retail Clerks while at the same time allowing representatives of IDCA to freely campaign among the employees in all areas of its stores.

(c) Unlawfully announcing the granting of increased benefits to employees in order to induce them to select the incumbent IDCA as their bargaining representative and to discourage support for the Retail Clerks.

(d) Removing campaign literature of the Retail Clerks from employees' bulletin boards while allowing campaign literature of the IDCA to remain posted.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its northern California drugstores and drug centers copies of the attached notice marked "Appendix."²⁴ Copies of said notice on forms provided by the Regional Director for Region 20, after being duly signed by Respondent Raley's authorized representative, shall be conspicuously posted at the facilities indicated above immediately upon receipt thereof, and be maintained by it for consecutive days thereafter, in places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations of unlawful conduct in the consolidated complaint not specifically found herein be dismissed.

IT IS RECOMMENDED that Joint Petitioners' Objections 1 and 2 be sustained and Objection 3 be overruled.

IT IS FURTHER RECOMMENDED that the election conducted on August 16, 1979, be set aside and a rerun election conducted at a time deemed appropriate by the Regional Director for Region 20.

²³ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."